

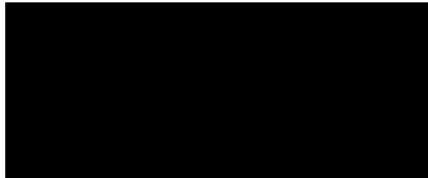
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



D7

DATE: NOV 02 2011

Office: VERMONT SERVICE CENTER

FILE: 

IN RE:      Petitioner:  
              Beneficiary:



PETITION:      Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:      SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center denied the nonimmigrant visa petition. The petitioner subsequently filed an appeal, which the AAO rejected as untimely filed pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(I). The matter is now before the AAO on a motion to reopen and reconsider. The AAO will dismiss the motion.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The beneficiary was previously granted L-1A classification for one year in order to open a new office in the United States and the petitioner now seeks to extend her status for two additional years.

On July 30, 2008, the director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal on September 10, 2008. The AAO rejected the appeal as untimely filed on November 18, 2009, noting that it was received 42 days after the director's decision was issued. Any appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(I).

The matter is now before the AAO on a motion to reconsider. On motion, the petitioner asserts that it timely submitted the appeal, but simply mailed it directly to the AAO instead of to the Vermont Service Center. The petitioner indicates that it has not filed an appeal previously and was confused as to where to file it. The petitioner acknowledges that it bears the responsibility to file the appeal with the appropriate office, apologizes for the mistake, and requests that the late appeal be accepted.

The regulation at 8 C.F.R. § 103.5(a)(3) states:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [U.S. Citizenship and Immigration Services (USCIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In addition, the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." The petitioner's motion does not contain this statement.

Here, the petitioner does not claim that the AAO's decision to reject the appeal was incorrect, but rather acknowledges its error in filing the appeal late, and requests that the AAO reconsider and accept the appeal as timely filed. The petitioner does not cite to any pertinent statute, regulations or pertinent precedent decisions in support of its assertion that the appeal should be considered timely filed. Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal.

The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion does not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must be dismissed for this reason.

Further a review of the record confirms that the AAO properly rejected the appeal as untimely filed. As noted in our previous decision, in order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal with the office where the unfavorable decision was made within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a USCIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the initial decision on July 30, 2008. The director properly gave notice to the petitioner that it had 33 days to file the appeal and properly instructed the petitioner to submit the appeal to the Vermont Service Center. It is unclear why the petitioner was confused as to where to file the appeal.

The petitioner initially submitted the Form I-290B, Notice of Appeal or Motion, on August 26, 2008; however, the Form I-290B was submitted to the AAO, and not to the Vermont Service Center, as required by the regulation at 8 C.F.R. § 103.2(a)(7)(i). On August 26, 2008, the AAO returned the appeal to the petitioner, advising that the appeal must be filed with the USCIS office that issued the unfavorable decision. The petitioner properly filed the appeal with the service center on September 10, 2008, 42 days after the director's decision was issued. Consequently, the appeal in this matter was untimely filed. Any appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1). Therefore, the AAO properly rejected the appeal.

As a final note, the proper filing of a motion to reopen and/or reconsider does not stay the AAO's prior decision to dismiss an appeal or extend a beneficiary's previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion is dismissed.